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Incorporated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT HENLEY, an individual,

Plaintiff,

VS.

HEINEKEN USA, a New York corporation, and
DOES 1 -50.

Defendants

| Case No.: C 12-04835 JSW

STIPULATED PROTECTIVE ORDER

[Assigned to the Honorable Jeffrey S. White]

1 **STIPULATION FOR ENTRY OF PROTECTIVE ORDER**

2 1. **PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted. Specifically,
6 Plaintiff Robert Henley's ("Plaintiff") claim for race discrimination has put Plaintiff's employment,
7 and any related personal information, at issue. Consequently, discovery in this action will necessarily
8 involve the disclosure of Plaintiff's confidential, non-public, and personal information, including
9 without limitation job history and performance, discipline, and personal data. In addition, Plaintiff's
10 allegation that he was not terminated for cause has put many confidential and proprietary aspects of
11 Defendant Heineken USA Incorporated's ("Defendant") business at issue. Consequently, discovery
12 in this action will necessarily involve the disclosure of Defendant's confidential, non-public,
13 proprietary, or trade secret information, including without limitation employment policies and
14 procedures, personnel details, information regarding marketing, and customers, and proprietary
15 know-how.

16 Plaintiff and Defendant (collectively, the "Parties") agree that although discovery of and
17 access to some of the Parties' personal, confidential, proprietary, and/or trade secret information may
18 be required during the course of discovery during this litigation, public disclosure of such information
19 may prejudice Plaintiff and/or Defendant's rights by, among other things, harming their reputation,
20 employment prospects, intellectual property, and competitive positions. Said documents,
21 information, and other materials may contain both relevant and irrelevant information, and
22 information that may be protected by state and federal statutes, common law, the United States
23 Constitution, the California Constitution, and intellectual property and trade secret laws protecting
24 privacy and proprietary, confidential, and trade secret information. Accordingly, the Parties hereby
25 stipulate to and request the court to enter the following Stipulated Protective Order, the purpose of
26 which is to protect the confidentiality, proprietorship, and/or privacy of the information that may be
27 produced and/or disclosed during the course of discovery during this litigation and limit the use of
28 such information.

1 The Parties acknowledge that this Order does not confer blanket protections on all disclosures
2 or responses to discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment under the applicable
4 legal principles. The Parties further acknowledge, as set forth in Paragraph 12.4, below, that this
5 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
6 Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the
7 standards that will be applied when a party seeks permission from the court to file material under
8 seal.

9 2. DEFINITIONS

10 2.1 Action: *Henley v. Heineken USA*, United States District Court, Northern District of
11 California Case No., C 12-04835 JSW.

12 2.2 Challenging Party: A Party or Non-Party to the Action that challenges the designation
13 of information or items under this Order.

14 2.3 Confidential Information: Any document (whether in hard copy or computer readable
15 form), thing, deposition testimony, interrogatory answers, responses to requests for admissions and
16 requests for production, disclosures pursuant to Federal Rule of Civil Procedure 26, or other
17 information provided in discovery in this Action, which contains information that is non-public,
18 confidential, and/or proprietary, whether personal or business-related; such as information regarding
19 employees' personal and employment information (including without limitation social security
20 numbers and personal bank account numbers), as well as information that constitutes, reflects, or
21 concerns trade secrets, know-how or proprietary data, business, financial or commercial information,
22 the disclosure of which is likely to cause harm to the competitive position of the party making the
23 confidential designations on Discovery Material, such as non-public customer lists, past product
24 development, past business/strategic plans, past sales projections, past marketing plans, and non-
25 public contracts. Certain limited types of Confidential Information may be further designated as
26 "Confidential – Attorneys' Eyes Only Information."

27 2.4 Confidential – Attorneys' Eyes Only Information: Any Confidential Information
28 relating to pending patent applications, products currently in development and not yet commercially

1 released, current business/strategic business plans, future sales/financial projections, future marketing
2 plans, detailed sales and financial data, or other highly sensitive or proprietary competitive or
3 financial information.

4 2.5 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
5 as their support staff).

6 2.6 Defendant: Defendant Heineken USA Incorporated.

7 2.7 Designating Party: The Party or Non-Party making the confidential designations on
8 Discovery Material.

9 2.8 Disclosure or Discovery Material: All items or information, regardless of the medium
10 or manner in which it is generated, stores, or maintained (including, among other things, testimony,
11 transcripts, and tangible things), that are produced or generated in disclosures or responses to
12 discovery in this matter.

13 2.9 House Counsel: Attorneys who are employees of a Party to this Action. House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.10 Non-Party: Any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this Action.

17 2.11 Outside Counsel of Record: Attorneys who are not employees of a Party to this Action
18 but are retained to represent or advise a Party to this Action and have appeared in this Action on
19 behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

20 2.12 Party: Any Party to this Action, including all of its officers, directors, employees,
21 consultants, retained experts, Outside Counsel of Record, and their support staffs.

22 2.13 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material
23 in this Action.

24 2.14 Protected Material: Confidential documents and information produced by any party in
25 any form in this litigation.

26 2.15 Receiving Party: Party receiving Confidential Information or Confidential Attorneys'
27 Eyes Only Information.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material, but
3 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
4 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
5 presentation by parties or their Counsel that might reveal Protected Material. However, the
6 protections conferred by this Stipulation and Order do not cover the following information: (a) any
7 information that is in the public domain at the time of disclosure to a Receiving Party or becomes part
8 of the public domain after its disclosure to a Receiving Party as a result of publication not involving a
9 violation of this Order, including becoming part of the public record through trial or otherwise; and
10 (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving
11 Party after the disclosure from a source who obtained the information lawfully and under no
12 obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be
13 governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by this
16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion
19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the
20 time limits for filing any motions or applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to limit
24 any such designation to specific material that qualified under the appropriate standards. The
25 Designating Party must designate for protection only those parts of material, documents, items, or
26 oral or written communications that qualify – so that other portions of the material, documents, items,
27 or communications for which protection is not warranted are not swept unjustifiably within the ambit
28 of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 2 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 3 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 4 other parties) expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it designated for
 6 protection do not qualify for protection, the Designating Party must promptly notify all other Parties
 7 that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designation: Except as otherwise provided in this Order (see,
 9 e.g., second paragraph of section 5.2(a) and (b) below), or as otherwise stipulated or ordered,
 10 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 11 designated before the material is disclosed or produced. Notwithstanding any other terms of this
 12 Protective Order, a Party may not designate Material produced by another Party.

13 Designation in conformity with this Order requires:

14 (a) For information in documentary form (e.g., paper or electronic documents, but
 15 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 16 affix the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each
 17 page that contains protected material. If only a portion or portions of the material on a page qualified
 18 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 19 appropriate markings in the margins). Such designated Material shall be identified by Bates number.
 20 To the extent practical, the legend or label shall be placed near the Bates number.

21 A Party or Non-Party that makes original documents or materials available for inspection
 22 need not designate them for protection until after the inspecting Party has indicated which material it
 23 would like copied and produced. During the inspection and before the designation, all of the material
 24 made available for inspection shall be deemed "CONFIDENTIAL – ATTORNEYS' EYES ONLY."
 25 After the inspecting Party has identified the documents it wants copied and produced, the Producing
 26 Party must determine which documents, or portions thereof, qualify for protection under this Order.
 27 Then, before producing the specified documents, the Producing Party must affix the
 28 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" legend to each page that

1 contains Protected Material. If only a portion or portions of the material on a page qualified for
 2 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 3 appropriate markings in the margins).

4 (b) For testimony given in deposition or in other pretrial or trial proceedings, that
 5 such be designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at
 6 the time of said deposition, or other pretrial or trial proceeding, or within thirty (30) days of receipt of
 7 the transcript, whichever is later. Until such thirty (30) day period shall expire, such testimony shall
 8 be treated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After such thirty (30) day period
 9 expires, such testimony shall be treated consistent with its designation, if any, and pursuant to the
 10 terms of this order.

11 (c) For information produced in some form other than documentary and for any
 12 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 13 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 14 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
 15 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 16 portion(s).

17 5.3 Inadvertent Failure to Designate. An inadvertent failure to designate qualified
 18 information or items does not, standing alone, waive the Designating Party’s right to secure
 19 protection under this Order for such material. Upon timely correction of a designation, the Receiving
 20 Party must make reasonable efforts to assure that the material is treated in accordance with the
 21 provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 25 designation is necessary to avoid substantial unfairness, unnecessary economic burdens, or a
 26 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 27 confidentiality designation by electing not to mount a challenge promptly after the original
 28 designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
2 by providing written notice of each designation it is challenging and describing the basis for each
3 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
4 recite that the challenge to confidentiality is being made in accordance with this specific paragraph of
5 the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must
6 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
7 are not sufficient) at a mutually convenient time after service of notice. In conferring, the
8 Challenging Party must explain the basis for its belief that the confidentiality designation was not
9 proper and must give the Designating Party an opportunity to review the designated material, to
10 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
11 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
12 if it has engaged in this meet and confer process first or establishes that the Designating Party is
13 unwilling to participate in the meet and confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
16 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)
17 within fourteen (14) days of the Parties agreeing that the meet and confer process will not resolve
18 their dispute, whichever is earlier. Each such motion must be accompanied by a competent
19 declaration affirming that the movant has complied with the meet and confer requirements imposed
20 in the preceding paragraph. Failure by the Designating Party to make such a motion including the
21 required declaration within fourteen (14) days shall automatically waive the confidentiality
22 designation for each challenged designation. In addition, the Challenging Party may file a motion
23 challenging a confidentiality designation at any time if there is good cause for doing so, including a
24 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought
25 pursuant to this provision must be accompanied by a competent declaration affirming that the movant
26 has complied with the meet and confer requirements imposed by the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
28 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to

1 retain confidentiality as described above, all Parties shall continue to afford the material in question
 2 the level of protection to which it is entitled under the Producing Party's designation until the court
 3 rules on the challenge or until the Designating Party withdraws such designation in writing or
 4 publicly discloses the Disclosure or Discovery Material by filing it with the court without seeking an
 5 order to file under seal.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 8 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 10 the categories of persons and under the conditions described in this Order. When the litigation has
 11 been terminated, a Receiving Party must comply with the provisions of Paragraph 13 below (FINAL
 12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 14 secure manner that ensures that access is limited to the persons authorized under this Order.

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
 16 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 17 information or item designated “CONFIDENTIAL” only to:

18 (a) To the Court and court personnel, subject to Paragraph 12.4 below. The Court
 19 and court personnel are not required to sign a confidentiality agreement or written acknowledgement
 20 of this Protective Order;

21 (b) The Outside Counsel of Record for the Parties to this litigation (K&L Gates
 22 LLP and Brownstein Thomas, LLP), their respective associates, partners, clerks, paralegals, legal
 23 assistants, secretaries, and other support staff who are actively engaged in assisting such attorneys in
 24 the prosecution or defense of this litigation or the related litigation. These persons are not subject to
 25 Paragraph 7.4 below;

26 (c) Parties to this litigation, Party employees, or House Counsel who have
 27 responsibility for maintaining, defending or evaluating this litigation, to the extent that their
 28

1 respective Outside Counsel of Record determines that such disclosure is necessary for the prosecution
2 or defense of this litigation;

3 (d) Independent experts retained or consulted by any party or their counsel as
4 required to assist in the conduct of this litigation, to the extent that Outside Counsel of Record
5 determines that disclosure is necessary for the prosecution or defense of this litigation, provided that
6 prior to disclosure, any such expert is provided with a copy of this Protective Order and
7 acknowledges in writing that he or she agrees to be bound by these terms;

8 (e) Clerical or ministerial service providers, including outside copying services
9 and court reporters, retained by a Party's counsel to assist such counsel in connection with this
10 litigation;

11 (f) Authors, addressees, or recipients of the Confidential Information;

12 (g) During their depositions, witnesses in the action other than the persons
13 identified in Paragraph 7.2(c) to whom disclosure is reasonably necessary and who have signed the
14 "Agreement to Be Bound by Protective Order," attached hereto as Exhibit 1; and

15 (h) To such other persons, as hereafter may be designated by further order of the
16 Court.

17 7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
18 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated "CONFIDENTIAL –
20 ATTORNEY'S EYES ONLY" only to:

21 (a) There shall be no access by the persons identified in Paragraph 7.2(c) (as it
22 pertains to the Receiving Party) to Confidential – Attorneys' Eyes Only Information.

23 (b) To the Court and court personnel, subject to Paragraph 12.4 below. The Court
24 and court personnel are not subject to Paragraph 7.4 below and are not required to sign a
25 confidentiality agreement or written acknowledgement of this Protective Order;

26 (c) The Outside Counsel of Record for the Parties to this litigation (K&L Gates
27 LLP and Brownstein Thomas, LLP), their respective associates, partners, clerks, paralegals, legal
28 assistants, secretaries, and other support staff who are actively engaged in assisting such attorneys in

1 the prosecution or defense of this litigation or the related litigation. These persons are not subject to
2 Paragraph 7.4 below;

3 (d) The author of the document or Material and to anyone shown on the document
4 or Material as having received it in the ordinary course of business;

5 (e) Access by persons identified in Paragraphs 7.2(d), (e), (g), and (h) of this
6 Protective Order shall be restricted to the retained independent consultants or experts for each party
7 whose duties and responsibilities require access to material designated as "CONFIDENTIAL –
8 ATTORNEYS' EYES ONLY," and who have complied with the provisions of Paragraph 7.4.
9 Individual staff, stenographic, and clerical employees of each such consultant or expert who has
10 complied with the provisions of Paragraph 7.4 need not comply with that paragraph. However,
11 persons identified in Paragraphs 7.2(d), (e), (g), and (h) must make reasonable efforts to insure their
12 staff, stenographic, and clerical employees do not violate any provision of this Protective Order;

13 (f) To such other persons, including retained expert witnesses, as hereafter may be
14 designated by further order of the Court.

15 7.4 Disclosure of Confidential Information or Confidential – Attorneys' Eyes Only
16 Information to Particular Persons

17 The persons identified in Paragraphs 7.2(c), (d), (e), (f), (g), and (h) shall be allowed access to
18 Confidential Information and the persons identified in Paragraphs 7.3(d), (e), and (f) shall be allowed
19 access to Confidential Attorneys' Eyes Only Information, subject to the limitations set forth above,
20 only after complying with the following procedure:

21 (a) Before receiving any Confidential Information or Confidential Attorneys' Eyes
22 Only Information, the person shall be furnished with a copy of this Protective Order and shall
23 acknowledge, by executing the "Agreement to Be Bound by Protective Order" (Exhibit 1), that he or
24 she has read this Protective Order, understands it, and agrees to be bound by it, and also expressly
25 consents to the jurisdiction of this Court in connection with any proceeding or hearing relating to the
26 enforcement of this Protective Order. House Counsel or employees authorized to receive
27 Confidential Information shall not be required to execute the "Agreement to Be Bound by Protective
28 Order" (Exhibit 1), but shall otherwise be bound by its terms; and

(b) Outside Counsel of Record for each Receiving Party shall retain a copy of each signed “Agreement to Be Bound by Protective Order” (Exhibit 1).

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party that some
5 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
7 in this litigation, the relevant discovery request(s), and a reasonably specific description of the
8 information requested; and

9 (3) make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court within
11 fourteen (14) days of receiving the notice and accompanying information, the Receiving Party may
12 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
13 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
14 possession or control that is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden
16 and expense of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
20 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
21 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
22 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
23 Order, and (d) request such person or persons to execute the "Agreement to Be Bound By Protective
24 Order" that is attached hereto as Exhibit 1.

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26
27

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests
in this court.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 2 MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 4 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
 5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 6 modify whatever procedure may be established in an e-discovery order that provides for production
 7 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 8 Parties reach an agreement on the effect of disclosure of a communication or information covered by
 9 the attorney-client privilege or work product protection, the Parties may incorporate their agreement
 10 in the stipulated protective order submitted to the court.

11 12. MISCELLANOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 13 its modification by the court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 15 no Party waives any right it otherwise would have to object to disclosing or producing any
 16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 17 Party waives any right to object on any ground to use in evidence of any of the material covered by
 18 this Protective Order.

19 12.3 Right to Redact. Nothing contained herein shall prevent a party from redacting from
 20 the Material it produces matter that the Designating party claims is a personal identifier or any other
 21 sensitive identifier, including without limitation the identifiers listed in the Federal Rules of Civil
 22 Procedure Rule 5.2(a), or is subject to attorney-client privilege, work product doctrine, a legal
 23 prohibition against disclosure, or other privileges or immunity.

24 12.4 Filing Protected Material. Without written permission from the Designating Party or a
 25 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 26 record in this action any Protected Material. A Party that seeks to file under seal any Protected
 27 Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may
 28 only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected

1 Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue
2 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
3 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
4 Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
5 the court, then the Receiving Party may file the information in the public record pursuant to Civil
6 Local Rule 79-5(e) unless otherwise instructed by the court.

7 12.5 Effective Date. To the extent that a Party or Non-Party decides to disclose material
8 subject to this Order before the Court signs this Order, this Order shall be deemed retroactive to the
9 date of the Party or Non-Party's disclosure. If a Party makes such a disclosure, it shall nonetheless
10 label its disclosure as if this Order had been executed or amend its disclosure within fifteen (15) days
11 from the date of this Order to label its disclosure according to this Order.

12 13. FINAL DISPOSITION.

13 Within sixty (60) days after the final disposition of this action, as defined in paragraph 4, each
14 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
15 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
17 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
18 the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty (60)
19 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
21 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
22 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
23 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain Protected Material. Any such archival copies that contain or
26 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
27 (DURATION).

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 I, Nancy C. Hagan, attest that the concurrence in the filing of this document has been obtained
3 from each of the other signatories pursuant to Northern District of California Local Rule 5-1(i)(3).

4
5 K&L GATES LLP
6

7 Dated: April 5, 2013

By: /s/ Nancy C. Hagan

Thomas H. Petrides
Christina N. Goodrich
Nancy C. Hagan

Attorneys for Defendant Heineken USA
Incorporated

11
12 BROWNSTEIN THOMAS, LLP
13

14 Dated: April 5, 2013

By: /s/ Mark C. Thomas

Mark C. Thomas

15 Attorneys for Plaintiff Robert Henley
16
17
18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19
20 Dated: April 12, 2013

21 By:

22 
HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for the
Northern District of California on [date] in the case of *Robert Henley, an individual v. Heineken USA,*
a New York corporation, and Does 1 -50, Case No. C 12-04835 JSW. I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____